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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 742

UNITED STATES OF AMERICA, APPELLANT

v.

DONALD SIMON

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

DEFENDANT'S RESPONSE TO JURISDICTIONAL STATEMENT

MC MANUS and HAUKOM
Attorneys for Defendant
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Madison, Wisconsin 53703

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JURISDICTION

Defendant concedes that plaintiff is correct in stating that the present case meets the pre-requisites of 18 U.S.C. 3731.

BUIE SHOULD BE RECONSIDERED

Defendant here argued in the District Court that the seller was placed in the position of selling contrary to Section 4742 or demanding that buyer obtain the form placing information thereon that would incriminate the seller. The District Court held that this would indeed violate the Fifth Amendment privilege of the seller.

The Court held in Leary that the buyer could claim the Fifth Amendment privilege because he was placed in the position of violating the Federal marijuana tax act or supplying information on the form which would expose his violation of state criminal statutes. In Buie the Court said that the seller was not placed in the same dilemma because the buyer would not procure the form under any circumstances anyway.

It would appear to the defendant here that if the Court's rationale in Buie is to stand that the underpinnings of Leary fall because the buyer in Leary was not faced with a dilemma either due to the fact that he would not under any circumstances obtain the required order form.

CONCLUSION

Therefore, defendant would request that the Court reconsider the decision rendered in Buie and not dispose of the present case in accordance with the Buie decision.

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March, 1970